

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.267 OF 2018**

**DISTRICT : NASHIK**

Dr. (Smt.) Mandakini K. Barve. )  
Age : 54 Yrs., Occu.: Medical Superintendent, )  
Class-I, Sub District Hospital, Tryambakeshwar, )  
District : Nashik and Residing at Flat No.3, )  
Morya Niwas Apartment, Anandvan Colony, )  
Yewalekar Mala, College Road, Nashik. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
Public Health Department, Mantralaya, )  
Mumbai - 400 032. )...**Respondent**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondent.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 25.02.2019**

**JUDGMENT**

1. In the present Original Application, the challenge is to the suspension order dated 17.02.2018 whereby the Applicant has been kept under suspension in contemplation of Departmental Enquiry (D.E.) invoking Rule 4(1)(a) of

Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979').

2. Shortly stated facts giving rise to this application are as under :

The Applicant was working as Medical Superintendent, Sub District Hospital, Chandwad, District Nashik. On 01.03.2017 in the morning, Dr. Naik was on OPD duty. However, in his absence one unauthorized person was found occupying his seat in OPD and was giving prescription to the patients. In respect of said incident, the preliminary enquiry was conducted. The Applicant was found responsible for lack of supervision. The Applicant was thereafter transferred to Latur and then again from Latur, she was transferred to Tryambakeshwar. While she was serving at Tryambakeshwar abruptly by order dated 17.02.2018, she has been placed under suspension. The Applicant contends that there was no lack of supervision on her part as alleged and on the contrary, she took immediate steps in this behalf by reporting the matter to the concerned authorities as well as by lodging FIR in Police Station. She had also made representations dated 03.03.2018 and 07.03.2018 for revocation of suspension and reinstatement in service, but in vain. Ultimately, she has filed the present O.A. challenging the impugned suspension order contending that, though she was kept under suspension, no D.E. is initiated and she was subjected to continuous suspension without any valid reason. She, therefore, prayed to set aside the suspension order dated 17.02.2018.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page No.51 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent sought to contend that the Applicant was posted as Medical Superintendent, and therefore, she was to supervise the functioning of the Hospital, but she failed to perform her duties efficiently. In the morning of 01.03.2017, one unknown person was found impersonating as a Medical Officer

and was giving prescription to the patients. Therefore, the preliminary enquiry was conducted and Dr. Naik as well as Applicant were found responsible for the negligence in duties. The Respondent, therefore, sought to justify the suspension order dated 17.02.2018.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

5. At the very outset, it needs to be stated that along with the Applicant, Dr. Naik came to be suspended and they both have challenged the suspension orders. O.A. filed by Dr. Naik was registered as O.A.450/2018 wherein interim stay to the suspension order was granted. In pursuance of it, Dr. Naik resumed the duties. Therefore, the Tribunal disposed of O.A.450/2018 on 06.07.2018 observing that, as in view of interim relief the Applicant joined the service, nothing survives in the matter.

6. In so far as this O.A. is concerned, pertinent to note that on filing of the O.A, the interim relief was granted to stay the impugned order of suspension by order dated 27.03.2018. It would be apposite to refer relevant observation from order dated 27.03.2018 in Paras 9 to 15, which are as follows :

“9. The order of suspension dated 17.02.2018 has been issued in relation to imputation of slack supervision. It has reference to incident which has allegedly held on 1.03.2017. It is alleged that on that date one un-authorized person was occupying seat of medical officer in OPD in the Sub-District Hospital, Chandwad.

10. Applicant has shown that the incidence was reported and even FIR was lodged as per the oral instructions of the Applicant.

11. In the meantime, the Applicant was transferred from Chandwad to Latur and thereafter Trimbakeshwar. However, due to some complaint by non-official, the matter of suspension of the Applicant has been processed and the Applicant has been suspended.

12. It prima-facie appears, any act of commission or omission done by the Applicant for which Applicant may be personally responsible is not the cause leading to suspension though the ground of allege slack supervision is used.

13. In the background that some unauthorized person has allegedly entered in the premises of OPD and occupied the chair of Medical Officer cannot be accepted as a product of slack supervision, particularly when ingress and egress in and from a public hospital is not physically controlled by Applicant.

14. Moreover, Applicant contends that OPD is situated in a separate building in same precincts and Medical Superintendent is not expected to have physical control on and all over premises, each building, room or chair.

15. Therefore it prima-facie appears that the Applicant has made out a case for grant of ex-parte ad interim relief by way of stay of impugned order of suspension.”

7. Admittedly, in pursuance of the order passed by this Tribunal, the Applicant resumed the duties and continued on the said post till date. The Respondent has not challenged the interim order by filing Writ Petition.

8. Now, the question comes whether in the facts and circumstances of the case as adverted to above, the suspension order dated 17.02.2018 is legal and sustainable and my answer is in negative.

9. Normally, the adequacy of material before the disciplinary authority for suspension of the Government servant cannot be looked into by the Tribunal, it being within the province of disciplinary authority. However, in the facts and circumstances of the present case, it is necessary to adjudicate as to whether there was sufficient ground to suspend the Applicant.

10. As stated above, the incident occurred on 01.03.2017. At that time, the Applicant was working as Medical Superintendent, Sub District Hospital, Chandwad. In the morning of 01.03.2017, Dr. Naik was on OPD duty. However, he was absent and in his absence, one unknown person impersonating himself as a Doctor was found sitting in OPD and issuing prescription to the patients. It was brought to the notice of Applicant by Smt. Gavit, Staff Nurse. Thereupon, the

Applicant reported the matter to higher authorities, as seen from Exh. 'C' (Page No.27 of P.B.). On the next day, the Applicant had also lodged F.I.R. as seen from Exh. 'E' (Page No.29 of P.B.). As such, it cannot be said that the Applicant did not take immediate action. In so far as alleged lack of supervision is concerned, the OPD was located in the separate building in the same precincts and it is in absence of Dr. Naik that unknown person alleged found sitting in his place. As such, the Applicant was not expected to have physical control over ingress and egress as observed by this Tribunal while granting interim relief. On this background, the material question comes whether it was a case of justifying the suspension of the Applicant.

11. In this behalf, it would be material to note the instructions laid down in Departmental Manual laying down the principle to be borne in mind while placing the Government servant under suspension, which are as follows :

**“2.1** When a Government Servant may be suspended.- Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.

Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a Government servant are of a serious nature and on the basis of the evidence available there is a *prima facie* case for his dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.

(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-

(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;

(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established."

12. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon'ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :

"Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned."

13. Similarly, reference was made to the Judgment of Hon'ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :

“9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted to as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post.”

14. Furthermore, reference was also made to Judgment of Hon’ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)** is imperative and the legal position is now no more *res-integra*. It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is as follows :

**11.** *Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.*

**12.** *Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

**21.** *We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of*

*its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepared his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."*

15. The Judgment in ***Ajay Kumar Choudhary's*** case was also followed by Hon'ble Supreme Court in ***State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21<sup>st</sup> August, 2018*** wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.

16. At this juncture, a reference can also be made to the Judgment of Hon'ble Bombay High Court in ***Dr. Narender O. Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016 (4) ALL MR 168***. In that case, the public servant/Medical Officer was suspended in contemplation of departmental enquiry for a longer period and there was failure on the part of Department to place the matter before the Review Committee in terms of G.R. dated 14.10.2011. The Hon'ble Bombay High Court held that the suspension does not appear to be either legal or in public interest, as the people are deprived of getting medical service from Medical Officer, and therefore, further continuation of suspension could not be in public interest.

17. Thus, what transpires from the Departmental Manual as well as the catena of decisions referred to above, the suspension should be ordered only when, circumstances warrant the same and it should not be invoked as a routine. If the allegations are of serious nature and on the basis of evidence available, there is prima-facie case for dismissal or removal of service, then suspension could be said justified. Ex-facie, the charges for lack of supervision cannot be termed so grave, so as to warrant major punishment. Where the charges are not of serious nature, at the most the Government servant can be transferred to some other place to ensure that he has no opportunity to tamper with the evidence against him.

18. In the present case, the incident occurred on 01.03.2017 at Chandwad. Thereafter, the Applicant was transferred to Latur and then to Tryambakeshwar, District Nashik. The impugned order of suspension has been passed after about 11 months while the Applicant was service at Tryambakeshwar. This being the position, there was no question of possibility of tampering the witnesses. As such, even assuming that there was lack of supervision on the part of Applicant, there was no valid or substantial reason for keeping her under suspension.

19. Pertinent to note that, though the Applicant was suspended in contemplation of D.E, till date, admittedly, no charge-sheet has been issued. This shows the blatant disregard to the instructions contained in G.R. dated 14.10.2011 which *inter-alia* provides that where the Government servant is kept under suspension in contemplation of D.E, it should be completed within six months. In the present case, the period of more than one year is over, but D.E. has not seen the day of light.

20. The necessary corollary of the aforesaid discussion leads me to sum-up that the suspension order has been passed in a very routine manner without application of mind about the charges against the Applicant. This is nothing but

arbitrary use of power in defiance of the instructions contained in Departmental manual as well as settled legal position. This Tribunal noticing all these aspects already granted interim stay to the suspension order and in pursuance of it, the Applicant resumed the service on the same post.

21. As such, having considered factual as well as legal aspect, I am of the considered view that the suspension in the present case was not at all warranted. No useful purpose would have been served by continuing the suspension. The suspension order has been passed mechanically without application of mind and contrary to law. Hence, it deserves to be quashed.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 17.02.2018 is hereby set aside.
- (C) By interim order dated 27.03.2018, the impugned order of suspension was stayed and the Applicant accordingly joined the post of Medical Superintendent, Sub District Hospital, Tryambakeshwar and shall continue on the said post.
- (D) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 25.02.2019

Dictation taken by :

S.K. Wamanse.